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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/941,164

08/28/2001

Amit Patel

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7590

05/21/2002

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EXAMINER

JIANG, SHAOJIA A

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 05/21/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/941,164

Applicant(s)

PATEL ET AL.

Examiner

Shaojia A. Jiang

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 13-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12 drawn to antiperspirant deodorant products (compositions) comprising specified components herein, classified in class 424, subclass for example 401.
- II. Claims 13-21 drawn to methods for making antiperspirant deodorant products herein, classified in class 536, subclass 18.5, 115.

Inventions Group II and I are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process herein may be used to make other materially different product for example a composition comprising butyl palmitate, cetareth-30, PPG 2, dicaprylyl ether and caprate to form an oil phase.

The search for all inventions would place an undue burden on the Office in view of the corresponding diversity in the field of search for each.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Ms. Janal M. Kalis on April 29, 2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-12. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser (6,221,345, PTO-892), Palinczar (4,724,139, PTO-892), and Kasat et al. (5,424,070, PTO-892).

Esser discloses that glycery stearate, dicapryl ether, cetearyl alcohol, Ceteareth-20, and water, and antiperspirant such as aluminum chlorohydrate are useful in

antiperspirant deodorant compositions. See abstract, col.4-5 Example 1-5, col.11 Example 11-12 and claims 1-2.

Palinczar discloses that glycery stearate, cetyl palmitate, fatty alcohols and antiperspirant such as aluminum chlorohydrates are useful in antiperspirant deodorant compositions. See abstract, col.4 lines 55-64, col.5 lines 5-15.

Kasat et al. discloses that Eumulgin compounds such as Ceteareth-12 and Ceteareth-20, and antiperspirant are useful in antiperspirant deodorant compositions. See abstract, col.4 lines 50-64.

The prior art does not expressly disclose the employment of the combination of cetyl palmitate, Ceteareth-12, glycery stearate, , dicapryl ether, cetearyl alcohol, Ceteareth-20, and water, and antiperspirant such as aluminum chlorohydrate in antiperspirant deodorant compositions.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the combination of cetyl palmitate, Ceteareth-12, glycery stearate, , dicapryl ether, cetearyl alcohol, Ceteareth-20, and water, and antiperspirant such as aluminum chlorohydrate in antiperspirant deodorant compositions.

One having ordinary skill in the art at the time the invention was made would have been motivated to employ the combination of cetyl palmitate, Ceteareth-12, glycery stearate, , dicapryl ether, cetearyl alcohol, Ceteareth-20, and water, and antiperspirant such as aluminum chlorohydrate in antiperspirant deodorant compositions since each of these components is known to be useful in antiperspirant deodorant compositions based on the prior art. Therefore, one of ordinary skill in the art

would have reasonably expected that combining each of these components would improve the property and/or usefulness of antiperspirant deodorant compositions.

Since all active composition components herein are known to useful in antiperspirant deodorant compositions, it is considered prima facie obvious to combine them into a single composition to form a third composition useful for the very same purpose. See *In re Kerkhoven*, 205 USPQ 1069 (CCPA 1980).

Thus the claimed invention as a whole is clearly prima facie obvious over the combined teachings of the prior art.

In view of the rejections to the pending claims set forth above, no claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. A. Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

Shaojia A. Jiang, Ph.D.
Patent Examiner, AU 1617
May 10, 2002

RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200